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Supreme Court of the United States

OCTOBER TERM, 1946

No. 541

G. C. ROWE, ANDY REYNOLDS, GRACE REYNOLDS, MILES REYNOLDS, POLLY REYNOLDS, ALEX REYNOLDS, JESSEE REYNOLDS, SARY REYNOLDS, W. M. JUSTICE AND TOBITHA JUSTICE,

Petitioners,

vs.

CHESAPEAKE MINERAL COMPANY,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

LeWRIGHT BROWNING,
Counsel for Respondent.

STANDARD PTG. & PUB. CO., LAW PRINTERS, HUNTINGTON, W. VA.

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The opinion of the Circuit Court of Appeals, Sixth Circuit, is reported in *156 Fed. (2) 752* (Advance Sheets), and is reprinted at R. 218, et seq. The opinion of the District Court is reported in *61 F. Supp. 773*, and is reprinted at R. 183, et seq.

I.

No Grounds Exist Herein for the Granting of Certiorari.

The question involved in this litigation is the construction of a mineral deed to Kentucky land under the pertinent decisional law of that state. There is no showing of any ground for certiorari under the provisions of

Rule 38, Rules of the Supreme Court.

Certiorari will not be granted "merely to give the defeated party in the circuit court of appeals another hearing."

Magnum Import Co. v. Coty, 262 U. S. 159.

II.

The Merits of the Case.

The facts of the case are fully set out in the opinions of the District Court and the Circuit Court of Appeals, above cited.

As executed and recorded, the deed conveyed "all coal and mineral lying upon and under" the grantors' farm in Pike County, Kentucky. Such a grant is free from ambiguity and under Kentucky law passes title to the oil and gas, as well as to the coal and other minerals.

Scott v. Laws, 185 Ky. 440, 215 S. W. 81.
Maynard v. McHenry, 271 Ky. 642, 113 S. W. (2) 13.
Ky.-W. Va. Gas Co. v. Preece, 260 Ky. 601, 86 S. W. (2) 163.
Fed. Gas, Oil & Coal Co. v. Moore, 290 Ky. 284, 161 S. W. (2) 46.
Hurley v. West Ky. Coal Co., 294 Ky. 96, 171 S. W. (2) 15.
Hudson & Collins v. McGuire, 188 Ky. 712, 223 S. W. 1101.
Slone v. Ky.-W. Va. Gas Co., 289 Ky. 623, 159 S. W. (2) 993.

The provisions of the deed granting the right "of entry to mine said coal, and mineral, with all the usual mining privileges," are not of a restrictive nature, and do not indicate an intention to exclude substances such as oil and gas, or render the deed ambiguous.

Fed. Gas, Oil & Coal Co. v. Moore, supra.
Hurley v. West Ky. Coal Co., supra.
Ky.-W. Va. Gas Co. v. Preece, supra.
Shell Oil Co. v. Dye, (C. C. A. 7) 135 Fed. (2) 365.

The fact that oil or gas had not been discovered in this territory prior to the date of the execution of the deed under consideration, is without significance.

Maynard v. McHenry, supra.
Ky. Diamond Min. & Dev. Co. v. Ky. Transvaal Diamond Co., 141 Ky. 97, 132 S. W. 397.

That it was the intention of the grantors to convey all mineral substances in, and under, the land, is clearly indicated by the reservation in the habendum clause of the deed reading, "reserving to ourselves the fee simple to the surface of said farm."

Fed. Gas, Oil & Coal Co. v. Moore, supra.
Shell Oil Co. v. Manley Oil Corp. (C. C. A. 7) 124 Fed. (2) 714, cer. den. *316 U. S. 690.*
Jividen v. New Pittsburg Coal Co., (Ohio App.) 187 N. E. 124.

The language of the deed as executed and recorded being free of any ambiguity or uncertainty, the deleted words may not be considered in the construction of the instrument.

Kennon v. Shepard, 236 Mass. 57, 127 N. E. 426.
Watson v. Paschall, 93 S. C. 537, 77 S. E. 291.
Remillard Brick Co. v. Remillard-Dandini Co., (Cal App.) 125 Pac. (2) 548.
13 C. J., p. 539, Sec. 505.
17 C. J. S., pp. 734, 735, Sec. 317.

The deed, as recorded, did not disclose the deleted words; the respondent, as a purchaser for value without notice, was entitled to rely upon the verity of the record, and is not affected by the intention of parties to the instru-

ment of which it has no actual notice and which is not expressed in the instrument.

Hudson & Collins v. McGuire, supra.
Phillips v. Big Sandy Co., 149 Ky. 555, 149 S. W. 957.
Cain v. Gray, 146 Ky. 402, 142 S. W. 715.
3 Washburn on Real Property, Sec. 2206.

A mineral deed, like other deeds of conveyance, is strictly construed as against the grantor and in favor of the grantee.

Clark v. Pauley, 291 Ky. 637, 165 S. W. (2) 161.
Franklin Fluorspar Co. v. Hosick, 239 Ky. 454, 39 S. W. (2) 665.
Rudd v. Hayden, 265 Ky. 495, 97 S. W. (2) 35.
Blackburn v. Piney Oil & Gas Co., 278 Ky. 191, 128 S. W. (2) 192.
Hurley v. West Ky. Coal Co., supra.
Kentucky Coke Co. v. Keystone Gas Co., (C. C. A. 6) 296 Fed. 320.

The determination of this cause being governed by Kentucky law, the reasoned judgment of the Circuit Court of Appeals based upon the law of Kentucky, should be followed unless clearly erroneous.

Helvering v. Stuart, 317 U. S. 154, 163.

It is respectfully submitted that the petition for certiorari should be denied.

LeWRIGHT BROWNING,
Counsel for Respondent.